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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

THISSELL, JEREMY

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/248,057

Applicant()

BUI ET AL.

Examin r

Jeremy T. Thissell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,8-13,18-21,24 and 26-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,8-13,18-21,24 and 26-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Objections

Claim 10 is objected to because of the following informalities: the acronym "LCD" should be written out completely as "liquid crystal display (LCD)" once before the abbreviation is used in the claims. Appropriate correction is required.

Claims 1, 11, 21, 30, 35, and 36 are objected to because of the following informalities: Applicant added the phrase, "and without user input" to each of these claims. Grammatically, the claims would work better without the word "and" in that phrase.

Claim Rejections - 35 USC § 102 or 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 8, 9, 11, 12, 18-21, 24, 26, 30, and 33-36 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wallace et al (US 6,024,089).

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Wallace teaches all the claimed subject matter including a device that selectively displays controller buttons on a touch screen display according to status of the medical device. Wallace also teaches that the controller is remote from the medical device and teaches that the controller has memory, status indicators, and a display (see figure 2; col. 2, lines 66-67; col. 3, lines 31-46; col. 5, line 64-col. 6, line 13; and col. 9, line 63-col. 10, line4).

Also, in col. 20, lines 13-32, Wallace teaches the selective display of on-screen buttons in response to apnea alarms which do not require user input.

Wallace broadly teaches that the controller buttons are selectively displayed. If applicant does not agree that this encompasses all phases of control or programming, the examiner takes the position that it would have been obvious to extend such selective displays to all phases in order to provide the user with a less complicated interface in each phase.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al.

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Wallace teaches all the claimed subject matter except for the display being an LCD and for the controller being a personal computer. Although Wallace does not explicitly state that the display can be an LCD, the examiner takes the position that LCD's are every bit as common as other displays such as CRT's (conventional computer monitors) and it would have been obvious to one of ordinary skill in the art to substitute one for the other.

Wallace teaches a substantial amount of computer componentry in col. 5, line 64-col. 6, line 12. In view of Wallace's use of so much equipment common to personal computers, one of ordinary skill in the art would have found it obvious that a personal computer would be suitable for use as the controller unit in Wallace.

Claims 3, 13, 27, 28, 31, and 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace in view of Lynch et al (US 5,885,245).

Wallace teaches all the claimed subject matter except for the medical device being a liquid infusion pump, and the controller having different display settings in memory, which are used based on recognition of different medical devices.

Wallace teaches that the medical device controlled is a ventilator, which of course pumps gas (which is a fluid) into the body. Lynch teaches a similarly controlled device wherein the medical device infuses liquid into the body. Since both devices pump fluids into the body, the examiner takes the position that one of ordinary skill in the art would have found it obvious to use the controller device of Wallace with a liquid

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infusion pump as taught by Lynch in order to reap the benefits of the simplified display keys during use of a liquid infusion pump.

Lynch also teaches that the device has memory that stores display settings for different liquid infusion pumps (col. 9, lines 23-38). Again, since the devices are so similar in their function, the examiner takes the position that one of ordinary skill in the art would have found it obvious to incorporate the memory settings (as taught by Lynch) for multiple ventilators into the device of Wallace in order to make the controller more versatile and/or universal by making it compatible with many different kinds of ventilators.

Response to Arguments

Applicant's arguments filed 11 June 2002 have been fully considered but they are not persuasive.

Applicant argued that the selective display of buttons in Wallace only occurs in response to user input. However, as discussed above, the passage in col. 20, lines 13-32 clearly teaches such response *without* user input.

Conclusion

This action is hereby made **NON-FINAL** since it is the first action on the merits following a Request for Continued Examination (RCE), which was filed due to Applicant's intent to introduce subject matter that the examiner had indicated as being a "new consideration" (see Interview Summary, paper no. 18). MPEP 706.07(b)

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Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Thissell whose telephone number is (703) 305-5261. The examiner can normally be reached on 8:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached at (703) 308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 306-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1143.

jt
August 23, 2002


BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700